

Malcolm M. Mitchell, Jr. (VSB No. 18098)
Vorys, Sater, Seymour and Pease LLP
277 South Washington Street, Suite 310
Alexandria, VA 22314
Telephone: 703-837-6999
Facsimile: 703-549-4492
Email: MMMitchell@vorys.com

Objection Deadline: 2/6/09
Hearing: 2/13/09 @ 10:00 a.m.

and

Tiffany Strelow Cobb (OH-0067516)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Telephone: 614-464-8322
Facsimile: 614-719-4663
Email: tscobb@vorys.com

Counsel for AOL LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

-----x)	
In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <i>et al.</i> ,)	Case No. 08-35653-KRH
)	
Debtors.)	Jointly Administered
)	Judge Kevin R. Huennekens
-----x)	

**MOTION OF AOL LLC FOR PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM**

AOL LLC (“AOL” or “Movant”) respectfully moves the Court pursuant to Sections 364 and 503 of title 11 of the United States Code (the “Bankruptcy Code”) to compel payment of AOL’s administrative claim. In support of this Motion, AOL states as follows:

BACKGROUND

1. On or about May 10, 2005, AOL and one or more of the above-captioned debtors (“Circuit City” or “Debtors”) entered into that certain inStore Insertion Order Agreement (as amended from time to time, including without limitation on March 28, 2006, March 16, 2007, and March 11, 2008, the “Shopping AOL I/O Agreement”),¹ pursuant to which, among other things, AOL provided certain advertising services (the “Services”).

2. On November 10, 2008 (the “Petition Date”), Debtors commenced the Bankruptcy Cases by filing their voluntary petitions (the “Petitions”) for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Virginia (the “Court”).

3. From and after the Petition Date, the Debtors have managed their affairs as debtors-in-possession.

4. Pursuant to the Shopping AOL I/O Agreement, AOL provided certain post-petition advertising services to Circuit City (the “Post-Petition Services”). Specifically, from the Petition Date through January 16, 2009, AOL provided Post-Petition Services to the Debtors totaling at least \$146,670.97, thereby providing a benefit to the Debtors’ estate. See Exhibits A, B and C (Invoices for Post-Petition Services).

5. The amounts owed by Circuit City to AOL for the Post-Petition Services were actual, necessary costs and expenses of preserving the Debtors’ estate and are unsecured debts incurred by Circuit City in the ordinary course of its business.

¹ Due to the proprietary and confidential nature of the Shopping AOL I/O Agreement, AOL did not attach copies to this Motion. Circuit City is presumably in possession of the Shopping AOL I/O Agreement; if not, Movants will provide a copy upon request. Moreover, and to the extent necessary, Movants can provide the Agreements to the Court for *in camera* review or file the Shopping AOL I/O Agreement under seal.

6. Payment of the first invoice for the Post-Petition Services was due on January 21, 2009 (the “Past Due Invoice”). See Exhibit A. As of January 23, 2009, Circuit City has failed to pay AOL on account of the Past Due Invoice, notwithstanding Circuit City’s assurances that payments would be made timely. See Exhibit A. The Past Due Invoice totals \$37,116.11. Id.

7. Subsequent invoices for additional Post-Petition Services reflect due dates of February 12, 2009 and February 20, 2009. See Exhibits B and C. Specifically, one invoice for Post-Petition Services due on February 12, 2009 totals an additional \$87,944.08; another invoice for Post-Petition Services due on February 20, 2009 totals \$21,610.78. See Exhibits B and C.

8. To the extent that Circuit City pays AOL in whole or in part on account of the Post-Petition Services prior to the February 13, 2009 omnibus hearing date, AOL will amend the relief sought in this Motion to reflect such payment(s).

JURISDICTION

9. The Court has jurisdiction over this matter under Sections 157 and 1334 of Title 28 of the United States Code (“Title 28”). This is a core proceeding pursuant to Section 157(b)(2) of Title 28. The venue of this case and this Motion is proper under Sections 1408 and 1409 of Title 28.

RELIEF REQUESTED

10. Pursuant to Sections 364(a) and 503(b)(1)(A) of the Bankruptcy Code, AOL is entitled to the allowance of an administrative claim for the Post-Petition Services provided to the Debtors (the “Administrative Claim”). Accordingly, AOL respectfully requests

that this Court enter an order allowing the Administrative Claim and requiring Debtors to promptly pay AOL on account of this Administrative Claim.

ARGUMENT

11. Section 503(b)(1)(A) of the Bankruptcy Code expressly provides that an administrative claim “shall be allowed” for “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). Further, unsecured debt that a debtor in possession incurs in the ordinary course of business is allowable under Section 503(b)(1) as an administrative expense. 11 U.S.C. § 364(a).

12. Courts generally apply a two-part test in determining whether a claimant such as AOL is entitled to payment of administrative expenses: “(1) the claim must arise out of a post-petition transaction between the creditor and the debtor-in-possession (or trustee) and (2) the consideration supporting the claimant's right to payment must be supplied to and beneficial to the debtor-in-possession in the operation of the business.” Devan v. Simon DeBartolo Group, L.P. (In re Merry-Go-Round Enters., Inc.), 180 F.3d 149, 157 (4th Cir.1998); In re Baseline Sports, Inc., 393 B.R. 105, 130 (Bankr. E.D. Va. 2008).

13. Here, the two-part test is readily satisfied. AOL and Circuit City continued to engage in business as usual in accordance with the Shopping AOL I/O Agreement. The Debtors’ estate received direct and indirect benefits from the Post-Petition Services. Moreover, the amounts owed by Circuit City to AOL for the Post-Petition Services were actual, necessary costs and expenses of preserving the Debtors’ estate and are unsecured debts incurred by Circuit City in the ordinary course of its business. Therefore, AOL is entitled to an administrative claim on account of the Post-Petition Services.

CONCLUSION

WHEREFORE, AOL LLC respectfully requests that the Court enter an order allowing the Administrative Claim for \$146,670.97; requiring Debtors to immediately pay AOL on account of the Administrative Claim; and granting such further and other relief as the Court deems just and proper.

DATED: January 23, 2009

Respectfully submitted,

/s/ Malcolm M. Mitchell, Jr.
Malcolm M. Mitchell, Jr. (VSB No. 18098)
Vorys, Sater, Seymour and Pease LLP
277 South Washington Street, Suite 310
Alexandria, Virginia 22314
E-mail: mmmitchell@vorys.com

and

Tiffany StreLOW Cobb, Esq. (OH-0067516)
Vorys, Sater, Seymour, and Pease LLP
52 East Gay Street
Columbus, Ohio 43216
Phone: (614) 464-8322
Fax: (614) 719-4663
E-mail: tscobb@vorys.com

Counsel for AOL LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2009, a true and complete copy of the foregoing Motion Of AOL LLC For Payment Of Administrative Expense Claim was served by either First Class Mail, postage prepaid and/or by electronic delivery to all of the parties on the attached Service List in accordance with the Order entered in this case on November 13, 2008, *Establishing Certain Notice, Case Management, and Administrative Procedures.*

/s/ Malcolm M. Mitchell, Jr.
Malcolm M. Mitchell, Jr. (VSB No. 18098)
Vorys, Sater, Seymour and Pease LLP
277 South Washington Street, Suite 310
Alexandria, VA 22314
Telephone: 703-837-6999
Facsimile: 703-549-4492

Counsel for AOL LLC



INVOICE
For Billing Inquiries 877-265-0823
Email SSCSupport@aol.com
Tax ID# 20-4268793

Remit to:
AOL LLC
General Post Office
PO Box 5696
New York, NY 10087-5696

CIRCUIT CITY
ATTN: STELLA LUCAS
9950 MAYLAND DR.
RICHMOND

VA 23233

Invoice Number 266727

Invoice Date 12/22/2008

Contract Number 9026252

Customer ID	Payment Terms	PAGE: 1
000015395	NET 30	
Description		Amount
=====		
GROSS AMOUNT:		37,116.11

Advertiser: Circuit City		
Order ID: 2768179		
Reporting Period: 11/10/08 - 11/26/08		
CPC Sub-total \$20,324.82		
CPM Sub-total \$16,791.29		
Advertising Flights on: AOL Shopping		
Reporting Attached		
AOL Ref: 9026252 DART 2768179		
Revised CSR 122208 LH Shopping CPM/CPC		
NET AMOUNT:		37,116.11
=====		
INVOICE TOTALS: PAYABLE IN USD		37,116.11



Please detach here and return this portion with your payment.

CIRCUIT CITY
ATTN: STELLA LUCAS
9950 MAYLAND DR.
RICHMOND

VA 23233

Customer ID 000015395 AR Cat: 6020

AOL LLC
General Post Office
PO Box 5696
New York, NY 10087-5696

Contract Number 9026252

Invoice Number 266727

Invoice Date 12/22/2008

Total Amount Due 37,116.11

EXHIBIT

A

tabbies



INVOICE

For Billing Inquiries 877-265-0823
Email SSCSupport@aol.com
Tax ID# 20-4268793

Remit to:
AOL LLC
General Post Office
PO Box 5696
New York, NY 10087-5696

CIRCUIT CITY
ATTN: STELLA LUCAS
9950 MAYLAND DR.
RICHMOND

VA 23233

Invoice Number 267720

Invoice Date	01/13/2009
--------------	------------

Contract Number 9026252

Customer ID	Payment Terms	PAGE: 1
000015395	NET 30	
Description		Amount
===== GROSS AMOUNT: 87,944.08 -----		
Advertiser : Circuit City Order ID : 2768179 Reporting Period : 11/27/2008 - 12/26/2008 CPC Sub - Total : \$53,116.88 CPM Sub - Total : \$34,827.20 Advertising Flights on : AOL Shopping *** Reporting Attached *** AOL Ref # : 9026252 - 2768179 CSR 010909 SV Shopping CPC/CPM NET AMOUNT:		87,944.08
INVOICE TOTALS : PAYABLE IN USD		87,944.08



Please detach here and return this portion with your payment.

CIRCUIT CITY
ATTN: STELLA LUCAS
9950 MAYLAND DR.
RICHMOND

VA 23233

Customer ID000015395 AR Cat: 6020

AOL LLC
General Post Office
PO Box 5696
New York, NY 10087-5696

Contract Number 9026252

Invoice Number 267720

Invoice Date	01/13/2009
--------------	------------

Total Amount Due	87,944.08
-------------------------	------------------

EXHIBIT

B



INVOICE

For Billing Inquiries 877-265-0823
Email SSCSupport@aol.com
Tax ID# 20-4268793

Remitt to:
AOL LLC
General Post Office
PO Box 5696
New York, NY 10087-5696

CIRCUIT CITY
ATTN: STELLA LUCAS
9950 MAYLAND DR.
RICHMOND

YA 23233

Invoice Number 268128

Invoice Date 01/21/2009

Contract Number	9026252
------------------------	---------

Customer ID	Payment Terms	PAGE: 1
000015395	NET 30	
Description		Amount
===== GROSS AMOUNT: 21,610.78 ----- Advertiser: Circuit City Order ID: 2768179 Reporting Period: 12/27/08 - 1/16/09 CPC Sub-Total: \$11,179.25 CPM Sub-Total: \$10,431.53 Advertising Flights on: AOL Shopping ***Reporting Attached*** AOL Ref: 9026252 DART 2768179 CSR 012109 LH Shopping CPC/CPM NET AMOUNT:		21,610.78
INVOICE TOTALS: PAYABLE IN USD		21,610.78



Please detach here and return this portion with your payment.

CIRCUIT CITY
ATTN: STELLA LUCAS
9950 MAYLAND DR.
RICHMOND

VA 23233

Customer ID:000015395 AR Cat: 6020

AOL LLC
General Post Office
PO Box 5696
New York, NY 10087-5696

Contract Number 9026252

Invoice Number 268128

Invoice Date 01/21/2009

Total Amount Due	21,610.78
-------------------------	------------------

EXHIBIT

C